

### REMARKS

Applicants appreciate the Examiner's continued examination of the present application in the Official Action of September 3, 2008 (hereinafter "Official Action"). Applicants appreciate the Examiner's withdrawing of the earlier rejections under 35 U.S.C. §103 in response to Applicants Amendment of June 27, 2008. However, similar to the previous Official Actions in the present case, the present Official Action continues to reject the independent claims under 35 U.S.C. § 103, but cites a new secondary reference. Applicants respectfully submit, however, that the secondary reference does not supply the missing teachings even if the two references are properly combinable. Accordingly, Applicants submit that all pending claims are in condition for allowance. Favorable reconsideration of all pending claims is respectfully requested for at least the reasons discussed below.

#### **The Rejections Under 35 U.S.C. § 112, First Paragraph Have Been Overcome**

Independent Claims 1, 12, and 23 stand rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. The Official Action states that the recitation "bi-directional communication between at least one mobile terminal and another mobile terminal" is not supported by the specification. In response, Applicants respectfully refer the Examiner to paragraph [26] of the specification which states:

Returning now to **FIG. 1**, the mobile terminal **155** communicates via the base station transceiver **145**. As used herein, the term "communicate" means transmit, receive, and/or both transmit and receive. A function of the base station transceiver **145** is to handle radio communication with the mobile terminal **155**. In this capacity, the base station transceiver **145** may function as a relay station for data and/or voice signals. Thus, the base station transceiver **145** may comprise a receiver and a transmitter. For purposes of illustration, only one base station transceiver **145** and one mobile terminal **155** are shown in **FIG. 1**. It will be understood, however, that the wireless network **140** may comprise hundreds of base station transceivers **145** respectively associated with hundreds of sectors or cells, and may serve thousands of mobile terminals. In addition to the base station transceiver **145**, the wireless network **140** comprises a base station controller **150**. The base station transceiver **145** also communicates with the base station controller **150**. The base station controller

**150** may comprise stored program control and processor resources for managing the wireless network **140**. (Emphasis Added).

This paragraph clearly describes a wireless communication network that both transmits and receives communications, i.e., bi-directional communications, among multiple mobile terminals. Although the words "transmit" and "receive" are used, rather than "bi-directional," Applicants respectfully submit that the terms "transmit" and "receive" clearly describe "bi-directional" communication to those skilled in the art.

In order to satisfy 35 U.S.C. § 112, first paragraph, the exact words of the claim need not be present in the specification. In particular, as noted by MPEP §2163.02, the subject matter of the claim need not be described literally in order for the disclosure to satisfy the written description requirement. Rather, under MPEP §2163, the standard for evaluating compliance with §112, first paragraph, is whether Applicants' disclosure, as of its filing, conveys with reasonable clarity that which is claimed.

Accordingly, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 112, first paragraph. However, if the Examiner would prefer to amend the claims to recite "transmitting and receiving communications" rather than "bi-directional communication," Applicants authorize the Examiner to do so in an Examiner's Amendment that accompanies a Notice of Allowance.

#### **Claims 1, 12 and 23 are Patentable**

Independent Claims 1, 12, and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over United States Patent Publication No. 2004/0057420 to Curcio *et al.* (hereinafter "Curcio") in view of newly cited United States Patent No. 7,379,760 to Ishii (hereinafter "Ishii"). (Official Action, page 3). Independent Claim 1 recites, in part:

providing a wireless communication network that has bandwidth associated therewith to facilitate bi-directional communication between at least one mobile terminal and another mobile terminal;

**obtaining authorization from a media broadcaster that provides streaming media to rebroadcast the streaming media over the wireless network, the streaming media comprising audio and/or video content;**  
**obtaining a subscription at the wireless network from the at least**

**one mobile terminal for the streaming media; then**  
transmitting the streaming media to the at least one mobile terminal  
using the bandwidth associated with the wireless network.

Independent Claims 12 and 23 include similar recitations and will not be analyzed separately. As highlighted above, authorization is obtained from a media broadcaster to rebroadcast streaming media over a wireless network. A subscription is obtained at the wireless network from one or more mobile terminals for the streaming media. Moreover, the wireless network is described as facilitating bi-directional communication between at least one mobile terminal and another mobile terminal and the streaming media comprises audio and/or video content.

The Official Action acknowledges that Curcio fails to disclose obtaining authorization from a media broadcaster to allow the streaming media to be rebroadcast over the wireless network and obtaining a subscription at the wireless network from the at least one mobile terminal that receives the rebroadcast of the streaming media. (Official Action, page 3). The Official Action alleges, however, that Godwin provides the teachings missing from Curcio. (Official Action, pages 3-4). Applicants respectfully disagree. Fundamentally, Ishii relates to a system and a method for data transmission and reception whereby music, data or the like provided by sponsors are downloaded to terminal devices such as mobile communication terminals for use as a ring tone, as noted in the very first paragraph of Ishii (column 1, lines 6-11). As noted in the first paragraph of Ishii's Summary of the Invention, column 1, lines 36-46:

The present invention has been made in view of the above circumstances and provides a data transmission-reception system and a data transmission-reception method for allowing content providers such as advertisers to transmit contents such as music data from first terminal devices to a server device over a network such as the Internet so that users may later download the contents by means of second terminal devices such as mobile communication terminal devices for use as a ring tone, whereby both the content providers and the users see their due benefits realized in a balanced manner.

Ring tones are fundamentally different from broadcast streaming media. In particular, as noted in the present application at paragraph [19]:

As used herein, "streaming media" means a continuous supply of data, such as audio, video, and/or text data. The data may be supplied from a source location, such as the media broadcaster **105**, to an end user. Streaming media may allow a user to listen to and/or view content instantly instead of requiring the user to download an entire file first before it may be listened to and/or viewed. (Emphasis added).

In sharp contrast, ring tones are the opposite of streaming media. Ring tones are downloaded beforehand so that they may be activated later when the phone rings. Accordingly, even if the ring tone service of Ishii was provided in Curcio et al., the recitations of independent Claims 1, 12 and 23 would not be described or suggested. Rather, a ring tone service that provides compensation for both the user and the content provider in a balanced manner would be provided. The recitations of independent Claims 1, 12 and 23 regarding streaming media would simply not be described or suggested.

Moreover, the passages of Ishii that were cited in the Official Action simply do not describe or suggest the claim recitations. In particular, the Official Action, at page 4, states that the claim recitation of:

obtaining authorization from a media broadcaster that provides streaming media to rebroadcast the streaming media over the wireless network, the streaming media comprising audio and/or video content;

is described by Ishii, Col. 8, lines 30-43. However, this passage recites:

The central management device 50 manages the entire wireless communication network made up of the mobile communication terminal devices 30. As such, the central management device 50 typically comprises a transmitter-receiver 51 that exchanges data with the base stations 2 and with the server device 20; a CODEC 52 that encodes and decodes data; a ROM 53 that stores control programs and the like for controlling overall operations; a RAM 54 into which the control programs are loaded from the ROM 53 or other locations; a storage unit 55 that accommodates call management data and other data about the mobile communication terminal devices 30; and a control unit 56 that controls overall operations based on the programs loaded into the RAM 54.

This paragraph simply does not describe or suggest obtaining authorization from a media broadcaster that provides streaming media to rebroadcast the streaming media over a wireless network, as recited in Claim 1.

Moreover, the Official Action alleges, at page 4, that "the streaming media comprising audio and/or video content" is described by Ishii, column 29, line 59- column 30, line 7.

However, this passage states:

The music data are transmitted and received rapidly over the Internet 3 when compressed by such methods as ATRAC3 (Adaptive Transform Acoustic Coding 3; trademark), MPEG-2AAC (Moving Picture Experts Group 2 Advanced Audio Coding; trademark), MP3 (MPEG-1 Audio Layer 3; trademark), TwinVQ (Transform-Domain Weighted Interleave Vector Quantization; trademark), MS Audio (WMA: Windows Media Audio; trademark), or Ogg Vorbis (trademark).

Alternatively, the music data may be replaced with promotion video data accompanied by music. In that case, upon receipt of an incoming call signal by the terminal device, the video data are displayed on the display unit 47 while the accompanying music is being reproduced as a ring tone. The promotion video data may be compressed by such methods as MPEG4 or MPEG7 for rapid transmission and reception.

Again, various types of ring tones are described. However, ring tones are the opposite of streaming media in that they are, by definition, downloaded earlier and then activated later in response to a telephone call. For at least these reasons, Claim 1 is patentable.

Finally, in rejecting Claim 1 at pages 3-4, the Official Action does not appear to provide any citation to Curcio or Ishii that describes or suggests "obtaining a subscription at the wireless network from the at least one mobile terminal for the streaming media," as recited in Claim 1. Claim 1 is independently patentable for at least this added reason.

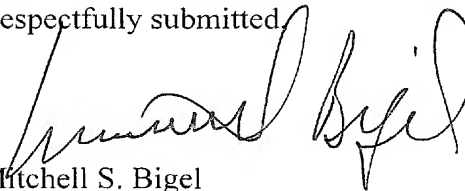
For at least the foregoing reasons, Applicants respectfully submit that independent Claims 1, 12 and 23 are patentable over Curcio in view of Ishii, and that dependent Claims 2-10, 13-21 and 24-32 are patentable at least by virtue of their depending from allowable claims.

### CONCLUSION

In view of the above, Applicants respectfully request withdrawal of the outstanding rejections and allowance of the present application. Respectfully, the present Official Action is the sixth time that the primary reference Curcio has been used in combination with a different secondary reference in an unsuccessful attempt to supply the teachings that are missing in Curcio. Yet, each time, the rejection has been withdrawn by the Examiner or by a Pre-Appeal Panel. Applicants have now shown that, once again, the newly cited Ishii secondary reference does not describe or suggest the claim recitations that are acknowledged in the Official Action as missing from Curcio. Accordingly, Applicants respectfully request withdrawal of the outstanding rejections and allowance of the present application.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,




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### CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on November 3, 2008.

  
Susan E. Freedman

Date of Signature: November 3, 2008